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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re C.D. et al., Persons Coming Under the
Juvenile Court Law.

B164907
(Los Angeles County
Super. Ct. No. CK40993)

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES, LOS ANGELES
COUNTY,

Plaintiff and Respondent,

v.

ERIC D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Valerie Skeba, Referee Presiding. Dismissed.

Steven D. Schatz, under appointment of the Court of Appeal, for Defendant
and Appellant.

Lloyd W. Pellman, County Counsel, and Stephanie Jo Farrell, Deputy
County Counsel, for Plaintiff and Respondent.

Eric D. appeals the juvenile court's order from a Welfare and Institutions Code section 366.21, subdivision (e) juvenile dependency status review hearing concerning the custody of his two children. On appeal, Eric D. complains the Department of Children and Family Services (DCFS) failed to comply with the notice provisions of the Indian Child Welfare Act (ICWA), 25 United States Code section 1912. Specifically, the DCFS (1) failed to include the children's paternal grandfather's name on the notices it sent to the Blackfeet Tribe; and (2) it did not send the notice of the proceedings to one of the federally recognized Cherokee Tribes. Based on these failures, Eric D. asks for a reversal of all orders and findings in the case. As set forth herein, Eric D.'s complaint is moot. Since Eric D. filed his notice of appeal, the DCFS corrected the errors, provided the required notice, and this court concluded (in connection with Eric D.'s prior appeal from the dispositional order) the DCFS complied with ICWA's notice requirements. Because this matter no longer presents an actual controversy, we dismiss it.

FACTUAL AND PROCEDURAL HISTORY

In mid-September 2001, the DCFS filed a section 300 petition to declare Eric D.'s minor children, C.D. and Michael D. dependents of the juvenile court. The petition alleged, among other things, Eric D. physically abused the children.¹

At the detention hearing, Eric D. indicated the children's paternal grandfather, who was deceased, was of Indian heritage from a Blackfeet tribe. The mother later indicated she had some Cherokee heritage.²

¹ The first volume of the clerk's transcript refers to the single volume clerk's transcript filed in Eric D.'s appeal (B157482) from the dispositional order. This court granted Eric D.'s request to take judicial notice of the record from that appeal.

² The mother was a party to the dependency proceedings until she passed away in late 2001.

DCFS sent notices of the proceedings to the Bureau of Indian Affairs (BIA), the Blackfeet Tribe and three Cherokee Indian Tribes (two of whom were federally recognized Cherokee Indian Tribes). DCFS used a pre-printed form issued by the State of California to send the notice. DCFS also used a pre-printed state form to request the BIA confirm the children's status with the Tribes. DCFS failed to include the name of the children's paternal grandfather on the form even though Eric D. provided the department with that information.

At the jurisdictional and dispositional hearing in March 2002, the court declared the children dependents under section 300 and ordered Eric D. to receive reunification services including visitation. The court also concluded ICWA did not apply because it received no notice from the Tribes or the BIA indicating the children's membership in any tribe. Eric D. immediately appealed from the dispositional order.

Eric D.'s First Appeal (B157482) raised a number of challenges to the dispositional order including the sufficiency of the notice under ICWA.

The juvenile dependency proceedings continued during the pendency of the First Appeal. On December 10, 2002, the court conducted a section 366.21, subdivision (e) status review hearing. The court continued the hearing for "receipt of proper notice to the Indian Tribe" and in the interim ordered reunification services to continue, with unmonitored overnight visits. On December 19, 2002, DCFS provided the Blackfeet Tribe with the name of the children's paternal grandfather. At the subsequent January 7, 2003, section 366.21, subdivision (e) hearing, the court found ICWA did not apply based on a lack of response from any Indian tribe.

On January 27, 2003, this court issued its opinion in the First Appeal. With respect to the ICWA notice issue, this court concluded the DCFS had arguably complied with the ICWA because it had filled out the required state forms for the notice. This court also found the DCFS's notice to the Cherokee Tribes was sufficient.

On February 23, 2003, this court granted a rehearing in the First Appeal to address the sufficiency of the pre-printed state form to provide notice under ICWA. Specifically,

the issue before the court was whether the form complied with ICWA in view of the fact that it did not include a space for inserting the name of the minor's grandparents.

On July 7, 2003, this court issued a new opinion in the First Appeal. This court concluded that because in December 2001 the DCFS specifically provided the Blackfeet Tribe with the name of the children's paternal grandfather, the DCFS had cured any notice problem and had complied with the requirements of the ICWA. Nonetheless, we did not dismiss the issue as moot because it presented a matter of "great public significance." In the published part of the opinion, this court found the pre-printed forms then in use were insufficient to comply with the ICWA and we urged the State to issue new forms.

The appeal now before us (the "Second Appeal") filed February 7, 2003, challenges the juvenile court's orders and findings at the January 2003, section 366.21, subdivision (e) hearing, arguing the DCFS's failure to comply with ICWA's notice provisions requires reversal of the orders and findings in the case.

DISCUSSION

The only matter raised in this Second Appeal, namely, the sufficiency of DCFS's notice under the ICWA, is the exact issue raised and resolved on the First Appeal. In particular, the claim in this appeal involves the same December 2002 notice to the Tribes this court found complied with ICWA.

When an issue on appeal is no longer of consequence to the parties and any ruling would have no practical effect on them, the appeal is subject to dismissal as moot. (*In re Jody R.* (1990) 218 Cal.App.3d 1615, 1621; see 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 331, 642, pp. 372-373, 669-671.) This is so because appellate courts decide only actual controversies. In general, if subsequent events make a previously justiciable controversy moot, the action can no longer be maintained and should be dismissed. (See

Finnie v. Town of Tiburon (1988) 199 Cal.App.3d 1, 10; see also *In re Jody R.*, *supra*, at pp. 1621-1622.)

Here subsequent events to the initial section 366.21, subdivision (e) hearing, specifically the DCFS's December 19, 2002, notice which included the name of the children's grandfather and this court's conclusion in the First Appeal the notices to the Blackfeet and the Cherokee Tribes complied with ICWA, resolve Eric D.'s complaint in this appeal. Because his Second Appeal presents no actual controversy, no effective relief may be granted. Thus, his appeal is moot.³

DISPOSITION

The appeal is dismissed.

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WOODS, J.

We concur:

PERLUSS, P.J.

ZELON, J.

³ We note the DCFS filed a motion to dismiss the appeal based on the law of the case doctrine rather than mootness. In light of our decision here, we need not decide whether law of the case would in fact support dismissal or would instead require an examination of the merits as suggested by our denial of the DCFS's motion.